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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 271

MICHAEL BUIE, PETITIONER

v.

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT*

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals affirming the judgment of the district court is reported at 407 F. 2d 905.

JURISDICTION

The judgment of the court of appeals was entered on March 12, 1969. On April 1, 1969, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to May 10, 1969, and the petition was filed on May 9, 1969. Certiorari was granted on June 23, 1969. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's privilege against self-incrimination was violated by his conviction for transferring marihuana not pursuant to a written order form, in violation of 26 U.S.C. 4742(a).

STATUTES AND REGULATIONS INVOLVED

The relevant statutes and regulations (26 U.S.C. 4741-4744, 4751, 4753-4755, 4771, 4773, 4775; 26 C.F.R. 152.63, 152.66, 152.105) are set forth in the Appendix, *infra*, pp. 21-27.

STATEMENT

A three count indictment filed in the United States District Court for the Southern District of New York charged petitioner with unlawfully transferring marihuana not in pursuance of a written order on a form issued by the Secretary of the Treasury, in violation of 26 U.S.C. 4742(a) (counts 1 and 2), and trafficking in marihuana, knowing it to have been unlawfully imported, in violation of 21 U.S.C. 176(a) (count 3). After a jury trial, petitioner was acquitted on counts one and three and convicted on count two, charging an unlawful transfer on May 18, 1967. On July 15, 1968, he was adjudged an addict and ordered committed for treatment and rehabilitation for an indefinite term not to exceed five years, pursuant to 18 U.S.C. 4253(a). The court of appeals affirmed, 407 F. 2d 905.

The evidence pertinent to count two showed that on May 8, 1967, undercover narcotics agents Dennis Nargi and Rafael Halperin were introduced to pe-

petitioner by another individual, Charles Arlaus, from whom they had been securing marihuana. As a result of this meeting, Nargi purchased approximately one-half pound of marihuana from petitioner. The transaction occurred at petitioner's apartment in Manhattan. Ten days later Nargi and Halperin returned to the apartment to purchase hashish. Petitioner was unable to make the sale at that time, but furnished Nargi with a telephone number where he could be reached later that evening. When Nargi telephoned petitioner, they made arrangements to meet at First Avenue and Forsyth Street at 9 p.m. to conclude the proposed transaction. At that meeting petitioner informed Nargi that he could not obtain hashish but agreed to procure marihuana. He directed Nargi to drive to a nearby street corner. Once there, petitioner left the automobile. When he returned, he handed Nargi five packages, each containing marihuana, and Nargi gave him \$20. Nargi testified that he never tendered to petitioner the official order form required by statute for such a transaction (A. 4-5).

At trial, petitioner contended that compliance with the order form provisions of the Marihuana Tax Act would have compelled him to incriminate himself and, accordingly, that his timely assertion of the privilege against self-incrimination was a complete defense to the prosecution. The district court, relying upon *Rule v. United States*, 362 F. 2d 215 (C.A. 5), certiorari denied, 385 U.S. 1018, and two then unreported decisions of other judges in the Southern District of New York

(A. 4)¹, rejected the contention. In affirming, the court of appeals considered petitioner's case indistinguishable from cases involving transferors of narcotics under 26 U.S.C. 4705(a). Relying upon its opinion in *United States v. Minor*, 398 F. 2d 511, certiorari granted, 395 U.S. 932 (No. 189, this Term), the court held that a transferor could comply with the requirements of Section 4742 without the hazard of self-incrimination (A. 14-16).²

ARGUMENT

INTRODUCTION AND SUMMARY

Petitioner was convicted of violating the order form requirement of the Marihuana Tax Act (26 U.S.C. 4741-4776) by transferring marihuana not in pursuance of a written order of the transferee on a form

¹ One, cited as *Burgos* has since been reported, *sub. nom. United States v. Reyes*, 280 F. Supp. 267. The second case, *United States v. Smith*, S.D. N.Y., No. 67 Cr. 893, decided March 5, 1968, involves a transferor of cocaine, in violation of 26 U.S.C. 4705(a) and 7237(b), and relies upon *Reyes*. It remains unreported.

² The court of appeals recognized that the marihuana order form requires the name of the transferor, whereas the narcotics order form does not. It concluded that this difference was not crucial, since the marihuana tax statute required the transferee to secure the form and did not provide that the transferor write his name on it in advance. The possible self-incrimination dilemma faced by the transferee, said the court, did not extend immunity to the transferor (A. 15-16).

The court made an additional observation, no longer apposite in the light of *Leary v. United States*, 395 U.S. 6. In concluding that the Marihuana Tax Act was not aimed at a class inherently suspect of criminal activities, the court pointed to the large number of legal registrants in the first year following enactment of the statute (3,665), rather than the current number, which has dwindled to 85 (A. 16).

issued by the Secretary of the Treasury (26 U.S.C. 4742(a)). His contention that conviction under Section 4742(a) violates his privilege against self-incrimination is premised on the principles announced by this Court in several recent cases involving federal tax statutes directed at conduct which is subject to a comprehensive system of State and federal criminal prohibitions. *Marchetti v. United States*, 390 U.S. 39; *Grosso v. United States*, 390 U.S. 62; *Haynes v. United States*, 390 U.S. 85; *Leary v. United States*, 395 U.S. 6. In each of those cases, the Court determined that the coexistence of the federal tax statute and the complex of criminal prohibitions imposed a dilemma on the individual whereby his compliance with the requirement of the federal tax law would create a "real and appreciable" risk of self-incrimination. *E.g.*, *Marchetti*, *supra*, 390 U.S. at 48-49. The Court held, therefore, that where such a risk exists, a timely assertion of the privilege against self-incrimination is a complete defense to a criminal prosecution for failure to comply with a requirement of the federal tax statute. See also *United States v. Covington*, 395 U.S. 57.

In light of the Court's rationale in *Leary*, *supra*, 395 U.S. at 16-18, it is beyond dispute, as petitioner argues at length (Br. 10-21), that disclosure of an individual's participation in a marihuana transaction subjects him to scrutiny and possible conviction under criminal statutes proscribing such transactions except among a small class of authorized persons. But that is the extent of petitioner's proper recourse to *Leary*

and its antecedents. Unlike those cases, the prosecution here does not rest on a statute with which the defendant could not comply without disclosing incriminatory information. Section 4742(a) does not require a prospective transferor of marihuana himself to disclose any information at all; it merely forbids him from making a transfer unless the transferee produces an order form which he has obtained from the Secretary of the Treasury.

Contrary to petitioner's argument, the fact that the *transferee* must disclose the name and address of the prospective transferor in order to secure an order form does not impose any obligation of *self-incrimination* on the transferor. Nothing in the statute requires the *transferor* to supply that information, and there is no basis for petitioner's assumption that such information can only be obtained from the transferor. Petitioner's privilege against compulsory self-incrimination is a personal right which is not offended by a taxing scheme that obliges a transferee of marihuana to disclose the source of his acquisition. Although an illicit transferor understandably would be reluctant to transfer marihuana to someone who is willing to identify him (cf. *Nigro v. United States*, 276 U.S. 332, 345-346), the restraint which the statute thus imposes on his activities involves no disclosures from him and infringes none of the values which the privilege against self-incrimination was designed to protect.

Since the receipt of an order form constitutes a complete defense to the statute under which petitioner was convicted, his self-incrimination contention gains

no support from the citation of another provision of the Act which requires a transferor who has received an order form to retain it for two years for inspection by narcotics agents (26 U.S.C. 4742(d)). The risk of self-incrimination, if any, which those subsequent requirements may impose on an unregistered transferor who complies with Section 4742(a) is a distinctly separate issue which may be raised as a defense by such a transferor in a prosecution for failure to comply with those requirements; the protection which the privilege might afford petitioner in those circumstances cannot be advanced to immunize his failure to comply with the primary requirement to receive an order form. In all events, the practical likelihood that an unregistered seller will receive an order form is so remote that the risk of self-incrimination which those subsequent provisions create can hardly be viewed as "substantial."

PETITIONER'S PRIVILEGE AGAINST SELF-INCRIMINATION
WAS NOT VIOLATED BY HIS CONVICTION UNDER 26 U.S.C.
4742(a) FOR TRANSFERRING MARIHUANA NOT PUR-
SUANT TO A WRITTEN ORDER FORM

A. SECTION 4742(a) IMPOSES A DISCRETE OBLIGATION ON THE TRANSFEROR—TO TRANSFER MARIHUANA ONLY UPON RECEIPT OF THE TRANSFEREE'S ORDER EVIDENCING HIS PAYMENT OF THE FEDERAL TAX—WITH WHICH THE TRANSFEROR CAN FULLY COMPLY WITHOUT FURNISHING ANY INFORMATION TO THE GOVERNMENT.

As outlined by the Court in *Leary* (395 U.S. at 14-16), the Marihuana Tax Act has two principal subparts: a transfer tax, which includes the order form requirement, and an occupational tax.

Insofar as the *occupational* tax provisions (26 U.S.C. 4751-4757) are relevant here, every person who, *inter alia*, “ * * * sells, deals in, dispenses, * * * or gives away marihuana” is subject to an annual special tax (Section 4751) and must register his name and business address at the nearest district office of the Internal Revenue Service (Section 4753(a)).³ Section 4755(a)(1) makes it unlawful for any person required to register and pay the special tax to engage, *inter alia*, in any of the forementioned activities without having complied with those requirements. As a seller of marihuana, petitioner was required to register and pay the occupational tax, but did not do so (Br. 27).⁴

The prohibition in 26 U.S.C. 4742(a) against *transfer* of marihuana except in pursuance of a written order form complements the marihuana transfer tax by inhibiting transactions in respect of which that tax has not been paid. Cf. *United States v. Sanchez*, 340 U.S. 42, 45; *United States v. Doremus*, 249 U.S. 86, 94-95. With certain narrow exceptions, not relevant here,⁵ all

³ Registrants are also required to file periodic returns showing the source and disposition of all marihuana acquired (Section 4754(a), 26 C.F.R. 152.91-152.99).

⁴ Subsections 4751 (1)-(4), (6), provide varying annual tax rates for specified occupational categories such as importers, producers, physicians, researchers, and millers. Other persons, like petitioner, who “deal in” marihuana but do not fall in any of the specified categories, are taxed under Section 4751(5) at a rate of \$3 per year.

⁵ The exceptions, contained in Section 4742(b), include transfers by or under prescription of a medical practitioner; legal

transfers of marihuana are subject to a tax, which is to be paid in advance by the transferee at the time he obtains an order form (Section 4741; 26 C.F.R. 152.66-152.69).⁶ Payment is evidenced on the order form by the attachment of revenue stamps in the amount of the tax, which varies with the status of the transferee: transferees who have registered and paid the occupational tax pay a transfer tax of \$1 per ounce; nonregistered transferees must pay a \$100 per ounce tax designed to discourage the acquisition of marihuana by illicit users (Sections 4741(a), 4743).⁷

The order form is executed in triplicate, and must contain the names and addresses of the prospective transferor and the prospective transferee and the amount of marihuana to be transferred (Section 4742 (c), (d)); the transferee is required to furnish this information, in an application accompanied by payment of the tax, in order to obtain the form (26 C.F.R. 152.66). One copy of the form is retained for two years by the district director to be available for inspection by federal, State, and local narcotics agents (Section 4742(d), 4773). The original, to which the revenue stamps are affixed, and the other copy of the

exportation to foreign countries, transfers to government officials, and transfers of marihuana seeds to persons registered under Section 4753.

⁶ A transferor who transfers marihuana without an order form, in violation of Section 4742(a), is secondarily liable for the transfer tax. Section 4741(b).

⁷ See H. Rep. No. 792, 75th Cong., 1st Sess., pp. 1-3; S. Rep. 900, 75th Cong., 1st Sess., pp. 2-3. In *Leary*, the Court held that Congress did contemplate that a nonregistrant should be able to obtain an order form and prepay the \$100 per ounce transfer tax (395 U.S. at 20-26).

order form are issued to the transferee, who tenders the original to the transferor at the time of the transaction (Section 4742(d), 26 C.F.R. 152.64, 152.69). Both transferor and transferee must retain the form for two years and permit it to be inspected by any federal or state narcotics official (Sections 4742(d), 4773). The marihuana statutes impose no obligation on the transferor (or on the transferee) to notify the government that the transaction has taken place (compare 26 C.F.R. 151.201 (narcotics)).

Section 4744(a) makes it unlawful for a transferee required to pay the transfer tax either to acquire marihuana without having paid the tax or to transport or conceal any marihuana so acquired. The Court in *Leary*, finding that the prepayment of the tax in compliance with that Section was inseparable from the procedure for securing an order form, held that the obligation thus imposed, in the case of an unregistered transferee, to come forward and identify himself as a prospective transferee of marihuana created an appreciable risk of self-incrimination. The Act, however, neither requires nor contemplates that a transferor of marihuana shall apply for an order form, and consequently he is under no obligation to make a self-incriminating disclosure.

The differing nature of the requirement imposed by Section 4742(a) significantly distinguishes this case from the *Marchetti-Leary* line of cases on which petitioner relies. In each of those cases, the Court found that " 'literal and full compliance' with all the statu-

tory requirements" on which the prosecution was premised would have compelled the defendant himself to provide incriminating information. In *Grosso*, for example, which involved a prosecution for willful failure to pay the federal wagering excise tax, it was determined that the obligation to pay the tax and the correlative duty to file monthly returns on the results of wagering activities "must be considered inseparable for purposes of measuring the hazards of self-incrimination which might stem from payment of the excise tax" (390 U.S. at 65). Section 4742(a), on the other hand, imposes no duty on a transferor of marihuana to come forward with any information at all. The transferor's receipt of the order form, without more, forecloses conviction under the statute. Transfer of marihuana to a transferee who does not furnish an order form, without more, is a completed offense under Section 4742(a).⁸

We do not understand petitioner to contend that merely requiring him to receive an order form would

⁸The government proved affirmatively that no order form was furnished to petitioner in this case; it did not rely on the presumption available under 26 U.S.C. 7491, which provides that "In the absence of the production of evidence by the defendant that he has complied with * * * section 4742 relating to order forms, he shall be presumed not to have complied with * * * such section * * *." This presumption, which was codified in a distant chapter of the Internal Revenue Code, is rarely invoked. In light of the Act's prohibition against transfers by unregistered transferors (Section 4755(a)(1)), reliance on this presumption in a prosecution against an unregistered transferor under Section 4742(a) would present problems of self-incrimination. But the mere fact that the presumption is available in no way enlarges the obligation which Section 4742(a) imposes on a transferor. See also pp. 15-18, *infra*.

itself violate his privilege against self-incrimination. Indeed, the distinction he makes between Section 4742 and the cognate provision of the Harrison Narcotics Act (26 U.S.C. 4705(a)) would seriously undermine such a contention (Br. 32-34). Nor does petitioner argue that the order form requirement is not an appropriate vehicle to effectuate the revenue-producing and regulatory purposes of the transfer tax. Cf. *United States v. Doremus*, 249 U.S. 86, 94-95; *Nigro v. United States*, 276 U.S. 332, 350-351. What he does object to is the fact that the order form procedure established by Section 4742 requires that the prospective transferee identify the intended transferor in order to secure an order form. We consider in the following section petitioner's argument that the incriminatory disclosures by the *transferee* violate the transferor's privilege against compulsory self-incrimination.

B. A TRANSFEROR'S PRIVILEGE AGAINST SELF-INCRIMINATION IS NOT VIOLATED BY THE FACT THAT A TRANSFEEE MUST IDENTIFY THE TRANSFEROR IN ORDER TO OBTAIN AN ORDER FORM

The fact that an illicit transferor of marihuana may be incriminated by the transferee's furnishing his name and address for inclusion on the order form does not, by itself, establish a violation of the transferor's Fifth Amendment privilege. It is manifest from this Court's opinions that the privilege is a personal right which the individual may invoke in his own behalf when he is asked to give information to the government. See *Miranda v. Arizona*, 384 U.S. 436; *Geo. Campbell Painting Corp. v. Reid*, 392 U.S. 286; *Rogers v. United States*, 340 U.S. 367; compare

United States v. Wade, 388 U.S. 218, 261 (opinion of Fortas, J.). We are unaware of any authority which would allow an individual to invoke his own privilege to prevent the government from securing information about his activities from another person.

Petitioner attempts to hurdle that obstacle to his conclusion with the creative argument that the transferee's disclosure of the transferor's identity is the product of some form of compulsion by the government upon the transferor (Br. 27-32). Thus, petitioner asserts, the statute imposes a "requirement" on the transferor to provide his name and address to the transferee "so that the transferee, acting as the statutory agent of the government for procuring this information, will transmit it to the government" (Br. 27). This characterization of the order form procedure, however, is fundamentally unsound for several reasons.

Nothing in the order form, statute or regulations "requires" a transferor to disclose his name and address to the transferee; the transferor cannot "require" the transferee to obtain an order form; and the transferee cannot "require" the transferor to complete the transaction even if he produces an order form. To be sure, Section 4742(a) permits transfers only to persons who have obtained an order form and thus have demonstrated that they know the transferor's name and address. But this consequence of the statute provides support for petitioner's self-incrimination argument only if it is assumed, as petitioner does (Br. 10), that a transferee necessarily must secure that information from the transferor himself.

The reliability of such an assumption, we submit, is much too uncertain to sustain petitioner's argument. The facts of the marihuana cases which reach this Court refute any notion that illicit sellers are characteristically anonymous transients. To the contrary, the cases support the hypothesis that marihuana vendors are likely to be known among regular clients, through whom new purchasers, including undercover agents, are introduced to him. In the present case, for example, the agents ascertained petitioner's address when they were taken to his apartment by Charles Arlaus, a friend of petitioner from whom the agents had previously acquired marihuana. At that meeting, which was 10 days prior to the transfer on which the conviction was based, Arlaus introduced petitioner to the agents as "Mike". The only fact which remained to be learned within those 10 days in order to obtain an order form was petitioner's last name. The record does not show whether the agents learned petitioner's name from petitioner himself or from any of the numerous other sources which could have supplied that fact. But it is sufficient here to conclude that such other sources are available to a prospective transferee; for unless the transferee necessarily must secure the incriminating information from the transferor, it cannot be said that the order form requirement imposes any obligation of *self-incrimination* on the transferor.

Even in those situations where the transferor himself reveals his name and place of business to the transferee, we cannot agree that that disclosure is the product of any compulsion by the government. The

relevance of that information to the transaction is not a malicious creation of the government; it is frequently in the interest of a seller, even of contraband goods, to make some such disclosure in order to encourage the buyer's subsequent patronage. Such voluntary statements, even if thereafter repeated to the government, are not protected by the privilege against compulsory self-incrimination. See *Hoffa v. United States*, 385 U.S. 293, 304. Nor is it helpful to characterize the transferee as the "statutory agent" of the government. Whatever conclusion petitioner seeks to draw from that label presumably would be required in every case in which an applicant for a federal license was obliged to disclose the names of those who willingly deal with him. In sum, there is no basis for assuming that compliance with Section 4742(a) requires the transferor to disclose any information or that any disclosures which he may make to the transferee incident to the marihuana transaction would be "compelled" within the scope of the Fifth Amendment protection.

C. THE FACT THAT THE STATUTE REQUIRES A TRANSFEROR TO RETAIN THE ORDER FORM FOR INSPECTION DOES NOT PROVIDE ANY SUPPORT FOR PETITIONER'S SELF-INCRIMINATION DEFENSE TO HIS FAILURE TO RECEIVE THE ORDER FORM.

Petitioner attempts to support his challenge to Section 4742(a) by pointing to the risks of incrimination which may be created by another provision requiring a transferor who complies with Section 4742(a) to retain the order form for two years and make it available for inspection by narcotics agents (Section 4742(d)). But whatever hazards those subsequent obliga-

tions involve for an unregistered transferor⁹—and we believe that such hazards realistically do not exist—they have no effect on petitioner's case. A transferor's retention of the order form is not necessary to achieve “‘literal and full compliance’ with all the statutory requirements” in a prosecution under Section 4742(a). We may properly stop at assessing the incriminatory effect of those obligations which an individual would have had to discharge in order to have satisfied the requirements of the statute on which the prosecution is based. In the present case, the only requirement imposed on petitioner was to receive an order form, or refrain from making a transfer in its absence. Receipt of the order form, without more, would have been a complete defense to the charge.

The argument which petitioner bases on the retention and inspection requirements is unsound for the further reason that it seeks to enlarge the self-incrimination protection which might be available to an unregistered transferor who actually subjects himself to those requirements by receiving an order form. An unregistered transferor in that situation could elect to avoid any risk of self-incrimination by refusing to

⁹ It seems apparent that the only risk of incrimination would arise from the transferor's demonstrating his possession of the form—as evidencing its receipt incident to a transfer of marijuana—rather than the disclosure of any information which the form contains. The government is in possession of all such information, before the transferor receives the form, by reason of the district director's retention of one of the copies. See p. 9, *supra*.

comply with the retention and inspection requirements, and the privilege could be raised as a defense in any prosecution based on his non-compliance.¹⁰ In such a prosecution, the defense would either be sustained—in which event it is clear that a prospective transferor would have nothing to fear from subsequent obligations which he could ignore with impunity—or it may be found that there is no substantial risk of self-incrimination—from which it would follow that a transferor who failed to demand an order form could raise no valid objection to those obligations. But the claims which might be raised in such a prosecution are not in issue here. Whatever protection the privilege might afford petitioner in those circumstances cannot be advanced to immunize his failure to comply with the primary requirement to receive an order form.

Finally, the risk of self-incrimination which the retention and inspection provision creates is, as a practical matter, "imaginary and unsubstantial" (see *Marchetti*, 390 U.S. at 48). Those requirements apply only to transferors who do receive order forms, and then only after order forms are received. Even if it is assumed that an order form addressed to an unregis-

¹⁰ Failure of a transferor to comply with the retention or inspection requirement is not specifically made unlawful under any provision of the marihuana statutes. Criminal penalties are available under general statutes, e.g., 26 U.S.C. 7203, enforcing federal reporting and record-keeping requirements, but those statutes are rarely, if ever, invoked in these circumstances. Compare note 8, *supra*.

tered transferor could be obtained," it is almost impossible to imagine a situation in which one of the 80-odd registered transferees would secure an order form to acquire marihuana on the illegal market. And the consequence of this Court's decision in *Leary*, while affirming the right of unregistered transferees to obtain order forms upon payment of the \$100 per ounce transfer tax, is to relieve such persons of any compulsion to do so. Thus, the extreme unlikeliness that an unregistered transferor would ever be subject to the retention and inspection requirements makes it impossible to state that a "very substantial risk of self-incrimination" is created by those requirements.

¹¹ Our argument throughout this brief has implicitly adopted this assumption: *i.e.*, that an unregistered transferor *would be able* to comply with Section 4742(a) because a transferee could obtain an order form to acquire marihuana from an unregistered transferor. We are informed, however, that it does not appear that an order form addressed to an unregistered transferor has ever been applied for or issued. Nothing in the statute or regulations specifically prohibits the issuance of such an order form, but it may be argued that authority to deny an application for such a form may be derived from the premise, absent any contrary indication in the legislative history, that Congress did not contemplate the issuance of an order form for a transfer which could not lawfully be made by an unregistered transferor. If that argument, which we do not press here, is accepted, then it would follow that the order form requirement of Section 4742(a) creates no risk of self-incrimination for an unregistered transferor because he would never be put in a position to comply with it; the order form requirement, as to him, would constitute a complete prohibition against all transfers. Cf. Brief for the United States in *Leary v. United States*, No. 65, O.T. 1968, pp. 23-29; *Webb v. United States*, 249 U.S. 96, 99.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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SEPTEMBER 1969.

APPENDIX

26 U.S.C. 4741 provides:

(a) Rate.

There shall be imposed upon all transfers of marihuana which are required by section 4742 to be carried out in pursuance of written order forms taxes at the following rates:

(1) Transfers to special taxpayers.

Upon each transfer to any person who has paid the special tax and registered under sections 4751 to 4753, inclusive, \$1 per ounce of marihuana or fraction thereof.

(2) Transfers to others.

Upon each transfer to any person who has not paid the special tax and registered under sections 4751 to 4753, inclusive, \$100 per ounce of marihuana or fraction thereof.

(b) By whom paid.

Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 4742 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

26 U.S.C. 4742 provides in pertinent part:

Order forms.

(a) General requirement.

It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 4751 to 4753, inclusive, to

transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary or his delegate.

* * * * *

(c) Supply.

The Secretary or his delegate shall cause suitable forms to be prepared for the purposes mentioned in this section and shall cause them to be distributed to each internal revenue district for sale. The price at which such forms shall be sold shall be fixed by the Secretary or his delegate, but shall not exceed 2 cents each. Whenever any of such forms are sold, the Secretary or his delegate shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana ordered to be plainly written or stamped thereon before delivering the same.

* * * * *

(d) Preservation.

Each such order form sold by the Secretary or his delegate shall be prepared to include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any person who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by such person for a period of 2 years so as to be readily accessible for inspection by an officer or employee mentioned in section 4773. The copy given to the purchaser shall be retained by the purchaser and preserved for a period of 2 years so as to be readily accessible to inspection by any officer or employee mentioned in section 4773. The second copy shall be pre-

served in the records of the internal revenue district.

* * * *

26 U.S.C. 4743 provides:

The stamps provided in section 4771(a)(1) for marihuana shall be affixed by the Secretary or his delegate to the original order form.

26 U.S.C. 4744 provides in pertinent part:

(a) Persons in general.

It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 4741(a)—

(1) to acquire or otherwise obtain any marihuana without having paid such tax, or

(2) to transport or conceal, or in any manner facilitate the transportation or concealment of, any marihuana so acquired or obtained.

Proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the Secretary or his delegate, to produce the order form required by section 4742 to be retained by him shall be presumptive evidence of guilt under this subsection and of liability for the tax imposed by section 4741(a).

* * * *

26 U.S.C. 4751 provides in pertinent part:

Imposition of tax.

Every person who imports, manufactures, produces, compounds, sells, deal in, dispenses, prescribes, administers, or gives away marihuana shall before engaging in any of the above-mentioned activities and thereafter on or before July 1 of each year, pay the following special taxes respectively:

* * * *

(5) Persons not otherwise taxed.

Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and

who deals in, dispenses, or gives away marihuana, \$3 a year; *Provided*, That any person who has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by paragraphs (1) and (2), may deal in, dispense, or give away marihuana imported, manufacturer, compounded, or produced by him without further payment of the tax imposed by this section;

* * * * *

26 U.S.C. 4753 provides in pertinent part:

(a) In general.

Any person subject to the tax imposed by section 4751 shall, upon payment of such tax, register his name or style and his place or places of business with the official in charge of the internal revenue district in which such place or places of business are located.

* * * * *

26 U.S.C. 4754(a) provides:

(a) Registrants.

Any person who shall be registered under the provisions of section 4753 with the Secretary or his delegate shall, whenever required to do so by the Secretary or his delegate, render a true and correct statement or return, verified by affidavits, setting forth the quantity of marihuana received or harvested by him during such period immediately preceding the demand of the Secretary or his delegate, not exceeding 3 months, as the Secretary or his delegate may fix and determine. If such person is not solely a producer, he shall set forth in such statement or return the names of the persons from whom said marihuana was received, the quantity in each instance received from such persons, and the date when received.

26 U.S.C. 4755(a) (1) provides:

(a) Trafficking.

(1) Liability.

It shall be unlawful for any person required to register and pay the special tax under the

provisions of sections 4751 to 4753, inclusive, to import, manufacture, produce, compound, sell, deal in, dispense, distribute, prescribe administer, or give away marihuana without having so registered and paid such tax.

26 U.S.C. 4771 provides in pertinent part:

§ 4771. Stamps.

(a) Method of payment.

(1) Stamps.

The taxes imposed by sections 4701 and 4741 shall be represented by appropriate stamps, to be provided by the Secretary or his delegate.

* * * * *

26 U.S.C. 4773 provides:

§ 4773. Inspection of returns, order forms, and prescriptions.

The duplicate order forms and the prescriptions, including the written record of oral prescriptions, required to be preserved under the provisions of section 4705 (c) (2) and (e), and the order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 4742, in addition to the statements or returns filed in the office of the official in charge of the internal revenue district under the provisions of sections 4732(b) or 4754, shall be open to inspection by officers and employees of the Treasury Department duly authorized for that purpose, and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the production of marihuana or regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana. The Secretary or his delegate is authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in the office of any official in

charge of an internal revenue district to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States as shall be entitled to inspect the said **statements or returns** filed in the office of the official in charge of the internal revenue district, upon the payment of a fee of \$1 for each 100 words or fraction thereof in the copy or copies so requested. * * *

26 U.S.C. 4775 provides:

§ 4775. List of special taxpayers.

The Secretary or any officer or employee designated by him is authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in the respective internal revenue districts as special taxpayers under the provisions of sections 4721 to 4726, inclusive, section 4702 (a), section 4751, or section 4752, upon payment of a fee of \$1 for each 100 names or fraction thereof in the copy so requested. * * *

26 C.F.R. 152.63 provides:

Method of payment.

The tax is paid by attachment of adhesive stamps to order forms as hereinafter shown. Stamps of various denominations are available. Payment for the stamps shall be made when application for the order form is submitted.

26 C.F.R. 152.66 provides:

Written order required for transfer of marihuana.

Except as otherwise provided, every person seeking to obtain marihuana shall make application on Form 679a (Marihuana) to the district director of internal revenue for the district in which the transferee is located for the purchase of an order form. The application shall show (a) the transferee's name, address,

and, if registered, the registration number, (b) the name and address of the transferor, and (c) a description, including quantities, of the desired articles or materials to be transferred. The application must be accompanied by a check, cash, or money order in payment of the transfer tax (see § 152.62), plus 2 cents in payment for the order form.

26 C.F.R. 152.105 provides:

Records open to inspection.

All order forms, duplicate forms, prescription records, returns, and inventories required under the provisions of subchapter A, chapter 39, relating to marihuana, or the regulations in this part to be kept on file shall be kept so that they can be readily inspected.